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PRM 11: Issues, Approaches, Arguments

PRM/NSC-11 addresses a subject which has received intense scrutiny during the 1970s--the structure and missions of intelligence. It was addressed by Schlesinger and OMB in 1971, by the investigations of 1975, and the NSC/OMB study which resulted in Executive Order 11905. PRM 11 is unlikely to surface major new ideas on intelligence performance, management and organization. This study should, however, serve a number of very useful purposes:

- Inform the President, NSC and new officials in the Administration about the issues and key considerations.
- Provide a vehicle for decisions on issues which have not been faced squarely by past Administrations.
- Satisfy the President (and the Congress) that his Administration is fully in control of intelligence.

The most immediate task is to place the PRM 11 issues into the proper order, identifying those which are fundamental in the sense that resolution of other issues is strongly dependent upon the approach taken to fundamental questions. This leads directly to the issue which underlay past studies of intelligence and is called out in PRM 11: the role of the DCI.

1. Is the DCI's role the most fundamental issue of PRM 11?

Yes

The President, the Congress and the country are most concerned about two aspects of US intelligence:

- Its propriety in light of US legal norms and political values.
- The effectiveness and efficiency of its performance in meeting the needs of national security, foreign policy, and US international trade and economics.

Both aspects, but especially the latter, are essentially matters of managing intelligence activities and resources. Management is basically a question of who--singly or severally--is to be held accountable for the propriety and effectiveness of intelligence performance, short of the President himself. Management is

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equally a question of the authority given to those who are held accountable for performance. While addressing the role and authority of the DCI will not in itself solve all intelligence management problems, it is an essential first step.

For several years, most have looked increasingly to the DCI for this accountability because he is senior among those officials who are heavily engaged in intelligence management and is the only official directly responsible to the President who is concerned solely with intelligence.

No

Although the DCI's role is a vital issue in PRM II, others are equally important, if not so clearly evident. There are demanding problems of intelligence performance which cannot be solved by the Community alone, whatever the DCI's role. One is the matter of determining user needs and priorities for intelligence, which requires the structured cooperation of users. Another key problem is to develop better resource management techniques, such as improved means for balancing resources among collection, processing and production, or for making resource tradeoffs among disparate collection programs, such as overhead photography and human sources. In still another area of basic concern, oversight of intelligence will require mechanisms and powers external to the DCI and the Community, however they are organized.

2. Are the responsibilities of the DCI presently out of balance with his powers?

Yes

Although he has the power to execute some of his responsibilities fully, such as managing CIA, the DCI is not fully empowered to fulfill the responsibility that is relatively new and increasingly important: managing Community activities and resources. Here he must manage by committee and negotiation with other agencies who do not share his sole preoccupation with intelligence performance or necessarily share his performance goals. On the matter of production of intelligence, the DCI has no control over departmental production, even where it is unnecessarily duplicative of national production. In another area, protection of sources and methods, his responsibility is clear, but his legal powers are very weak.

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No

In managing the Community, the DCI is admittedly in a difficult position. But more line authority will not necessarily solve the problem of enhancing performance. Executive Order 11905 gave the DCI a hard but still manageable problem. Since it is inherently so difficult to define what mix of resource allocations, against current or future intelligence problems, is just right, a committee/negotiating approach to management is the best way to assure on the average that reasonable decisions are made. As regards protection of sources and methods, changes in the laws are clearly needed to impose criminal sanctions, whatever the powers of the DCI in other areas.

3. If it is accepted that the responsibilities of the DCI exceed his authorities, should there be an increase in his executive power, i.e., the power to direct the actions of Community organizations, assign and reward their personnel, and control their funds?

Yes

In the final analysis, executive power is the only way to manage successfully in an area where the right way to go can never be agreeable to all members of a committee. To fulfill his responsibilities, however, the DCI does not need to have full executive power over all elements of US intelligence, or even over all elements that form part of that community for whose performance he is accountable. But he must have full executive power over the critical mass of collection, processing and production activities that dominate that Community's performance. Only with such power can he persuade those elements he does not control to meet him halfway, or make up with his own resources for their failure to do so.

No

Emphasis on full executive powers understates the real value and effectiveness of the DCI's current power to coordinate and to persuade. If elements of the Community are forced by Presidential order to reconcile their activities with one another in a process over which the DCI presides, he has real power. Moreover, some elements of management power, such as budgetary control, can be enhanced without altering other elements, such as control of personnel or line command authority.

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4. If the DCI's executive power is not increased, should those responsibilities which he does not have authority to carry out be reassigned elsewhere?

Yes

To leave the current imbalance of responsibility and authority runs the risk of serious shortfalls in intelligence performance or efficiency because no one is clearly and totally in charge.

No

The checks and balances of Executive Order 11905, with perhaps some amendments, are adequate to prevent gross shortfalls in performance or efficiency. The power of the DCI and Department heads to appeal to the President, together with the President's own monitoring and control mechanisms (OMB, NSC Staff, Intelligence Oversight Board, PFIAB), are adequate to assure that intelligence activities and performance will be legal, responsive and effective.

Stemming from the above issues about the DCI's role are a number of subsidiary issues. These are discussed in Tabs A and B as follows:

- Tab A: PRM 11 Task 1, the adequacy of existing laws, Executive Orders and Directives.
- Tab B: PRM 11 Tasks 2 and 3, the responsibilities, powers and instruments of the DCI and an assessment of Executive Order 11905. Tasks 2 and 3 are so closely related that they are discussed as one.

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Tab A

PRM 11, Task 1

Adequacy of Existing Laws, Executive

Orders, National Security Council

Intelligence Directives and Departmental

Directives

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TASK ANALYSIS

An SCC Subcommittee, under the chairmanship of the Attorney General, shall:

Review the adequacy of existing laws, Executive Orders, National Security Council Intelligence Directives and Departmental Directives to include:

1-a. Legal sanctions for the protection of sources and methods.

OPTION: Accept the status quo.

PROS

Avoids very difficult legislative action which might result in an unsatisfactory and ineffective law.

CONS

Current espionage law and civil remedies, as in the Marchetti case, are inadequate and unclear.

Does not provide a deterrent against deliberate leaks.

Proof of violations is likely in itself to cause severe additional damage to the national security.

Fails to provide criminal sanctions or injunctive relief for secrecy oath violations.

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1-a. (Cont'd)

OPTION: Develop new legislation protecting sources and methods.

PROS

Would provide a deterrent to deliberate leaks with penalties for violators.

Would provide legal basis for enforcement of secrecy oaths.

Would seize opportunity to establish further protection at time when new Intelligence Community charters are being considered.

CONS

Mood of Congress may preclude passage of really effective law (a compromise law could be even less effective than at present).

Could raise specter of a U.S. official secrets act and attendant adverse publicity.

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1-b. Issues raised by the Privacy Act and the Freedom of Information Act.

OPTION: Accept the status quo.

PROS

Review procedures and generally favorable court decisions have prevented loss of sensitive information under present laws.

Volume of requests and appeals under present laws may subside over time.

CONS

Administrative burden to review requests and act on appeals has been great in cost and man-hours.

Risk of unfavorable court decision on appeal and the precedent set could compel disclosure of sensitive information at any time.

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1-b. (Cont'd)

OPTION: Amend the Acts to exclude specific categories of information or agencies.

PROS

Leadership of Senate Select Committee might enable amendment to except agencies of Intelligence Community, either generally or for specific purposes.

Exceptions might be granted under law for certain categories of information, e.g., SIGINT.

CONS

Effort to amend current laws might result in adverse provisions being included.

Mood of Congress might not support amendments favorable to Intelligence Community desires and needs.

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2. Legislation that both protects the civil rights of U.S. persons and provides for appropriate collection of foreign intelligence and counterintelligence through electronic and physical surveillance.

OPTION: Accept the status quo.

PROS

Inherent powers of the President to authorize conduct of operations against agents of a foreign power as at present is intact and has not been successfully challenged in the courts.

Existing legislation and oversight is adequate to protect rights of U.S. persons; presumed need to write new law is due to congressional suspicion of wrongdoing.

CONS

Attorney General has stated need to "legitimatize" in law those operations now being conducted legally.

Attorney General and DCI are committed in confirmation testimony to support legislation of this sort.

Congress might initiate and pass unfavorable legislation despite Executive Branch position.

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2. (Cont'd)

OPTION: Support legislation which formalizes protection, confirms authorities.

PROS

Attorney General and DCI are essentially committed in support (at least with respect to electronic surveillance).

Cooperative Executive Branch attitude stands good chance of obtaining acceptable legislation.

Cooperation in surveillance area may garner Congressional support for laws needed in other intelligence areas.

CONS

Erodes the inherent power of the President unnecessarily.

Legislation as presently conceived increases administrative burden and presents some security problems in most sensitive operations.

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3. The need for statutory charters for all foreign intelligence agencies.

OPTION: Accept the status quo.

PROS

Permits continuing implementation of E.O. 11905 as principal directive for operation and interrelationship of Community organizations.

Permits new Administration the flexibility of initiating needed changes by amending E.O. 11905.

Does not preclude other changes to be made to National Security Act of 1947, or the initiation of other required intelligence legislation.

CONS

Continues problem, as perceived by Congress, of no statutory charter for Intelligence Community organizations other than CIA.

Certain changes are desirable (i.e., second Deputy DCI legislation), and other complimentary statutory changes should be made concurrently.

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3. (Cont'd)

OPTION: Amend Executive Order 11905 to be more specific on agency charters.

PROS

Could take steam out of Congressional attempt to create statutory charters.

Provides maximum flexibility to new Administration to effect needed changes, and protects inherent power of President.

Could provide for greater recognition of Congressional oversight authority and responsibility.

CONS

Might be taken by Congress as an attempt to foreclose statutory charter action by Congress.

Could result in eventual Congressional action unpalatable to Executive Branch.

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3. (Cont'd)

OPTION: Amend National Security Act of 1947 or establish other comprehensive legislation to incorporate appropriate charters of all foreign intelligence agencies.

PROS

Church Committee recommended restructuring relationships among various agencies and between them and DCI, as well as inclusion of statutory charter for all agencies.

Inclusion of charter under general umbrella of amended National Security Act could avoid focusing attention on several independent charter statutes.

Could provide clear and positive legal authority in support of activities of all intelligence agencies.

Could provide legal protection to employees carrying out certain activities authorized by statute.

Senate Select Committee, Subcommittee on Charters, supposedly has charter legislation about finished and ready for coordination.

CONS

Publicity attendant to the legislative process detailing and authorizing intelligence operations could adversely affect U.S. interests.

Statutes are rigid and not easily changed, whereas changing intelligence requirements frequently require new or altered authorities.

Risks erosion of inherent Presidential power and/or executive-legislative confrontation when President chooses to exercise inherent power in extension of statutory charter authority.

Mood of Congress does not assure passage of satisfactory statutory charters.

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3. (Cont'd)

OPTION: Develop statutory charters as separate legislation for each foreign intelligence agency or groups of agencies.

PROS

Enables specific problems and authorities to be dealt with in regard to each agency.

Is in keeping with Church Committee recommendations as well as intention of Senate Select Committee on Intelligence.

Could provide clear and positive legal authority in support of activities of all intelligence agencies.

Could provide legal protection to employees carrying out certain activities authorized by statute.

Senate Select Committee, Subcommittee on Charters, supposedly has charter legislation about finished and ready for coordination.

CONS

Focuses legislative spotlight on each intelligence agency or activity as charter moves through legislative process.

Foregoes opportunity to coordinate functions of Intelligence Community; could result in haphazard overlapping, or conflicting functions and responsibilities.

Publicity attendant to the legislative process detailing and authorizing intelligence operations could adversely affect U.S. interests.

Statutes are rigid and not easily changed, whereas changing intelligence requirements frequently require new or altered authorities.

Risks erosion of inherent Presidential power and/or executive-legislative confrontation when President chooses to exercise inherent power in extension of statutory charter authority.

Mood of Congress does not assure passage of satisfactory statutory charters.

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Tab B

PRM 11, Tasks 2 and 3

Task 2: Responsibilities, powers and instruments
of the DCI

Task 3: Assessment of Executive Order 11905

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Current DCI Responsibilities and Authorities

1. As head of CIA

- Full executive control over CIA collection, processing, analysis, production, support, covert action.
- But some powers might be seen as not exercised to the fullest, e.g., personnel policies and quality, communication barriers among CIA Directorates.
- DCI control over CIA is also influenced by the fact that CIA is part of the Intelligence Community. Head of CIA supports activities of common concern, e.g., NPIC.
[redacted] His CIA analytic effort is heavily dependent on collection activities in DOD and State. So, in the real world, CIA is not a self-contained intelligence agency whose performance can be optimized apart from the rest of the Community.
- DCI's role as head of CIA may conflict--or be perceived as conflicting--with his role as manager of Community activities and resources.

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2. President's Foreign Intelligence Advisor

This role depends upon what the President expects from the DCI, and potentially encompasses such disparate elements as purveyor of substantive intelligence; primary intelligence advisor in warning and crisis situations; contender for a larger share of the Federal budget for intelligence; and primary interface between the President and Congress on intelligence matters.

The effectiveness of the DCI in the role depends on his ability to carry out his responsibilities in other areas, and on his personal access and rapport with the President and his senior national security aides.

3. Intelligence Advisor to Congress

This is a new and growing role. The Congress expects much of the DCI as manager and as a source of intelligence inputs to its own deliberations. This role must be clarified

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and how it is clarified can add to or detract from the DCI's role in the Executive Branch. Too strong a role vis-a-vis Congress can risk pulling the DCI out of the President's team.

4. Producer of National Intelligence

The responsibilities are clear, but the DCI has direct tasking authority only over the CIA. The use of the resources from other organizations depends upon cooperation and coordination. This problem can be particularly acute in warning and crisis situations.

Clearly, the drive to centralize, if acceded to in collection and processing, has to be guarded against in the production of national intelligence. The country cannot afford and is ill-served by a fragmented collection effort, but it can afford and must have a variety of voices on matters of substantive intelligence.

5. Protection of Sources and Methods

The DCI can admonish, but has no investigative authority outside of CIA, and no criminal sanctions can be applied unless aid to a foreign government can be proven.

6. Manager of Community Activities and Resources

Responsibilities and authority are not commensurate in this area.

- In the PRC review of programs and budgets, the DCI is one of four voices, even though he is Chairman. Departmental prerogatives run directly counter to a strong DCI role in resource allocation.
- Except for CIA collection (primarily clandestine collection), the DCI does not have direct authority over the allocation of collection tasks. Individual program managers exercise the real control.

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- In the budget review and program development process, the DCI lacks clear authority for direct access to intelligence program managers, except for CIA.

Community Issues

The following are major issues concerning Intelligence Community activities and performance which will likely arise in some form in PRM II:

- Adequacy of mechanisms for prevention of illegal or improper intelligence activities (DCI's authority in this area applies only to CIA activities).
- Assuring the proper interface and most effective combined utilization of national and tactical intelligence resources. (Problem is DOD concern about DCI control of tactical resources.)
- Coordination of counterintelligence activities (lack of national-level policy guidance inhibits this coordination; DCI needs additional coordinating authority).
- Control of compartmentation and decompartmentation (machinery for making changes exists, but individual organizations can delay procedures).
- Warning and crisis support (despite recent improvements, Community efforts are still too fragmented; there is difficulty in getting information from the departments and NSC about ongoing or planned US diplomatic or military actions; and there is insufficient attention to early warning processes intended to aid in avoiding or mitigating incipient crisis).
- Transition to wartime functions (in the event of a major war involving attack on the United States, present arrangements would not support the DCI in his role as advisor to the President).
- Identifying consumer needs and priorities (arrangements exist on paper, but they may not be sufficient and, in any event, need more determined implementation).
- Validation of collection requirements (arrangements are adequate in imagery and SIGINT, but not in HUMINT, where many human sources are not controlled by the Intelligence Community).

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- Improving the timeliness and quality of intelligence products (issues include the means whereby it is assured that products are relevant to user needs; the number, quality, and training of analysts in many key areas; and the adequacy of data bases in a number of key areas--e. g., Soviet economy, nuclear proliferation).
- The adequacy of the Community's intelligence planning system (Is the system sufficiently responsive to user needs? Does it have any real impact on the activities of the Community?)
- Development of net assessments (Is current Community policy correct in addressing only the red side of "red-blue" net assessments? Are intelligence data bases and analytic techniques adequate?)
- Evaluation of Community performance (Are the IC Staff and departmental evaluation mechanisms adequate?)

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